

REMARKS/ARGUMENTS

This paper is in response to the Office Action mailed April 8, 2009.

Claims 1-16, 18 and 20 are pending in the application.

In the claims, Claim 19 has been cancelled. Claim 17 was cancelled in the previous amendment.

The examiner has rejected Claims 16 and 20 under 35 U.S.C. 102(b) as being anticipated by Baird (US patent No. 5,709,049). Claims 16 and 20 are independent. Both claims are currently amended to include new limitations, namely, tubes formed from landscape fabric or vapor permeable sheet material which define an opening in the fabric or sheet for receiving plants. Both also contain limitations directed to a permeable hose or conduit threaded through the tube and held adjacent to the opening by the tube.

Baird does not teach a water permeable hose or conduit attached to the underside of landscape fabric and adjacent to the edge of an opening in the fabric. The examiner points to Figs. 5 and 12 in Baird, however, Fig. 5 clearly shows the “irrigation hose or tube 100 mounted within the ring 34” and not attached to the underside of the membrane 86. See Bair, col. 5, line 14. Nor does Fig. 5 show the tube 100 attached adjacent to the edge of the opening 88. Rather, the tube 100 is significantly spaced apart from the opening 88. In fact it is placed near the perimeter of the ground cover 20—about as far from adjacent as possible. Fig. 12 shows an irrigation hose 200 attached to the end walls 188 and side walls 182 of the ground covering enclosure 180, and not

attached to the underside of the membrane 190. See Baird, col. 7, lines 12, 13, 42-51. Nor is the hose 200 shown adjacent an opening in the membrane 190. As shown in Fig. 13, the hose 200 is mounted significantly below the membrane and opening—spaced apart from, not adjacent to.

To anticipate, the reference “must not only disclose all elements of the claim within the four corners of the document, but must also disclose those elements ‘arranged as in the claim.’” *Net MoneyIN, Inc. v. VeriSign, Inc.*, 545 F.3d 1359, 1369 (Fed.Cir.2008) (quoting *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 1548 (Fed.Cir.1983)). Baird does not disclose the invention as claimed in Claims 16 and 20 and in fact teaches away from the invention with respect to placement and attachment of a water permeable hose.

Claim 16 recites that the opening in the landscape fabric is “partially defined by an adjacent portion of a tube formed of said fabric” and that the water-permeable hose is “threaded through said tube, whereby said hose is attached to the underside of said fabric adjacent an edge of said opening.” Similarly, Claim 20 recites the steps of “forming a tube that defines an edge of an opening by folding back a portion of the sheet cut to form the opening and attaching the folded portion to the sheet” and “threading the conduit through the tube” to attach the fluid-permeable conduit adjacent an edge of the opening. Baird does not disclose use of a tube formed of fabric or sheet material (or membrane) to define a portion of a planting opening and to hold a water permeable hose or conduit adjacent the opening.

The examiner has rejected Claims 1-14 under 35 U.S.C. 103(a) as being unpatentable over Smith (US patent No. 3,955,319) in view of Eckart (US patent No. RE15,231), Frydryk (US patent No. 4,044,501) and Chapin (US patent No. 3,361,359). Claim 1 is independent. Claims 2 through 14 depend from Claim 1.

The cited references, either individually or in combination, do not disclose the tubes of the present invention, formed by folding over and securing flaps of sheet material cut to create plant openings, to hold permeable hoses adjacent to such openings, and defining an edge of the openings.

Smith discloses sheets with slits in agricultural mulch in various patterns for receiving plants. Smith does not disclose a tube formed of folded sheet material or fabric, cut when forming a plant opening, that defines an edge of the opening and holds a water/fluid permeable hose adjacent to the opening, thereby (1) weighing the sheet to the ground at the opening itself to avoid disturbance of the sheet by wind and (2) providing targeted delivery of fluid/water to the opening.

The examiner maintains that new reference Eckart teaches a flap formed by a slit folded back upon the underside of a sheet. Eckart does not. Eckart clearly discloses “folding the flaps backward over the top surface of the mulsh [sic?] and securing the ends of the flaps in slits....” (Col. 1, lines 45-47, emphasis added.) Further, Eckart discloses providing additional openings in the mulsh for receiving moisture from “rains or other sources” AND specifies that such additional openings NOT be connected with the planting openings but that they be “more or less remote from the latter....”

(Col. 2, lines 57-58, emphasis added.) In other words, Eckart not only fails to teach the claimed novel and nonobvious structures of the present invention but teaches away from their very purpose and the principal improvements provided by the claimed invention to the field of art!

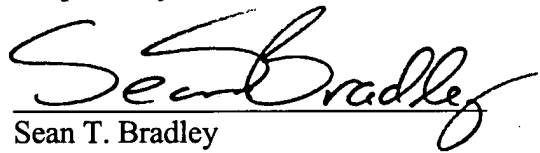
Chapin discloses permeable hoses threaded in tubes but not tubes attached to a sheet of vapor-permeable material, not tubes formed from flaps cut from such material to form openings for plants, not tubes that define an edge of the opening, and not tubes that hold a water permeable hose adjacent to such opening. Nor do Smith, Eckart or Chapin suggest modifying the prior art to attain the structures and functionality of the claimed invention, rather the combination teaches away from the claimed invention by teaching displacement of a water source away from, not adjacent to, a plant opening in a weed barrier and watering apparatus.

The examiner has rejected Claim 15 under 35 U.S.C. 103(a) as being unpatentable over Smith (US patent No. 3,955,319) in view of Eckart (US patent No. RE15,231), Frydryk (US patent No. 4,044,501) and Chapin (US patent No. 3,361,359), and in further view of Baird (US patent No. 5,709,049). The examiner alleges that reference numeral 108 in Baird points to a conical flow restrictor, as recited in Claim 15. Applicant can find no support for this allegation as the patent clearly uses reference numeral 108 to identify a coupling and no conical flow restrictor is shown or described in Baird.

In view of the above amendments and remarks it is respectfully requested

that a timely Notice of Allowance be issued in this case. In the event that the Examiner is of the opinion that the prosecution of this application can be advanced thereby, she is encouraged to contact Applicant's attorney at the telephone number listed below.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean T. Bradley", is written over a horizontal line.

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